

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

LARRY FREDERICK and SHARON
FREDERICK,

Joint Debtors.

LARRY FREDERICK and SHARON
FREDERICK,

Movants,

v.

M&T BANK, THE UNITED STATES OF
AMERICA FARM SERVICE AGENCY,
CARGILL, INC., SUSQUEHANNA
COMMERCIAL FINANCE, INC.,
GROWMARK FS, LLC, FS FINANCIAL
SERVICES, LLC, WELLS FARGO
VENDOR FINANCIAL SERVICES, LLC,
BLAIR COUNTY TAX CLAIM BUREAU,
PENNSYLVANIA DEPARTMENT OF
REVENUE, AND THE INTERNAL
REVENUE SERVICE,

Respondents.

Bankruptcy No. 18-70870-JAD

Chapter 11

Related to Doc. No. 184, 205 and 224

Hearing Date: March 16, 2021 at 10:00 am
Response Deadline: February 16, 2021

**STIPULATION AND CONSENT ORDER RESOLVING
LIMITED OBJECTION TO JOINT DEBTORS' MOTION FOR SALE
OF REAL PROPERTY AND PERSONAL PROPERTY FREE AND
CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**

GROWMARK FS, LLC ("Growmark FS") and FS Financial Services, LLC ("FS Financial") (unless otherwise noted, together "Growmark"), with the consent of the Debtors, Larry Frederick and Sharon Frederick (the "Joint Debtors"), M&T Bank, and the United States

Department of Agriculture, Farm Service Agency (“FSA” and collectively with Growmark, the Joint Debtors, and M&T Bank, the “**Parties**”) file this *Stipulation and Consent Order Resolving Limited Objection to Joint Debtors’ Motion for Sale of Real Property and Personal Property Free and Clear of All Liens, Claims and Encumbrances* (the “**Stipulation**”).

WHEREAS, on December 20, 2018 (the “**Petition Date**”), the Joint Debtors filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code;

WHEREAS, prior to the Petition Date, Growmark extended secured input and seed financing to the Joint Debtors, in connection with their dairy farm operations, as evidenced by those certain Note/Security Agreements dated October 21, 2016 (the “**2016 NSA**”) and October 16, 2017 (the “**2017 NSA**”);

WHEREAS, under the 2016 and 2017 NSA’s, the Joint Debtors granted to Growmark a security interest in and to all of their personal property, including, without limitation, all accounts, crops, livestock, farm products, machinery, equipment, seed, fertilizer, harvested and stored grain, milk and other supplies or products used in their dairy farm operations, and all products and proceeds derived therefrom (the “**Collateral**”);

WHEREAS, Growmark’s security interest in the Collateral was perfected by properly filed UCC Financing Statements No. 2011042803932, dated April 28, 2011, continued by No. 2016031801432, dated March 18, 2016;

WHEREAS, the Joint Debtors defaulted on their obligations under the 2016 and 2017 NSA’s (the “**Defaults**”).

WHEREAS, based upon the Defaults and the funds owed to Growmark, Growmark filed proofs of claim at Claim No. 19 and Claim No. 20 on the Claims Register, which evidenced the

claims of Growmark and FS Financial in the amount of \$128,101.36 and \$132,981.57, respectively;

WHEREAS, on January 27, 2021, the Joint Debtors filed a Motion for Sale of Property Free and Clear of All Liens, Claims and Encumbrances (“**Sale Motion**”), wherein the Joint Debtors proposed to sell the Collateral and certain parcels of real estate to Eric and Jennifer Frederick (the “**Buyers**”), the son and daughter-in-law of the Joint Debtors, for an aggregate purchase price of \$2,100,000 plus the assumption of the Joint Debtors’ obligations due and owing to Growmark to the extent of Growmark’s allowed secured claim under 11 USC § 506, if any, on the Collateral (the “**Purchase Price**”);

WHEREAS, the proposed sale to the Buyers is subject to higher and better offers at an auction to be held before the United States Bankruptcy Court for the Western District of Pennsylvania (the “**Bankruptcy Court**”) on March 16, 2021;

WHEREAS, the assets to be sold to the Buyers include two parcels of real estate, identified in the Sale Motion as 1098 Frederick Road and 1219 Frederick Road (together, the “**Frederick Road Properties**”) along with the Collateral;

WHEREAS, pursuant to a Stipulation and Consent Order so ordered by the Bankruptcy Court and a separate Order of Court, both entered on February 19, 2021 (at ECF Document Numbers 211 and 212 and, collectively, referred to as the “**Agreed Orders**”), the Joint Debtors, M&T Bank, and the FSA agreed to allocate the Purchase Price for the Frederick Road Properties and Collateral as follows: (1) \$1,575,000 for 1098 Frederick Road; (2) \$525,000 for 1219 Frederick Road; and (3) for each parcel of the Frederick Road Properties, 87.54% of the price will be allocated to real estate and 12.46% allocated to the Collateral. (the “**Proposed Allocation**”);

WHEREAS, Growmark filed a limited objection to the Sale Motion through which it, *inter alia*, objected to the Proposed Allocation and also the proposed Sale Order to the extent the Sale Motion sought to subordinate Growmark's lien on the Collateral to that of M&T Bank in an amount greater than \$100,000 (the "**Objections**");

WHEREAS, to resolve the Objection, the Parties have agreed to the terms set forth below.

AND NOW, based upon the foregoing, and with Growmark, the Joint Debtors, M&T Bank, and the FSA intending to be legally bound, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. In the event of a closing on a sale of the Frederick Road Properties and the Collateral, Growmark shall hold an allowed secured claim against the Joint Debtors in the amount of \$120,000 (the "**Growmark Claim**").
2. The Growmark Claim shall be paid as follows:
 - a. The amount of \$55,000 shall be paid to Growmark by the Buyers (or any purchaser who outbids the Buyers) at the time of closing of the sale of the Frederick Road Properties.
 - b. The remaining balance of the Growmark Claim in the amount of \$65,000 shall be paid to Growmark by the Buyers (or any purchaser who outbids the Buyers) in 65 equal monthly payments of \$1,000 per month at 0% interest.
 - c. Notwithstanding the foregoing, the Buyers (or any purchaser who outbids the Buyers) shall have the option to pay the full amount of the Growmark Claim at the time of closing of the sale of the Frederick Road Properties and Collateral.

3. Until the Growmark Claim is paid in full, Growmark shall hold a first priority, perfected lien and security interest in and on the Collateral. For the avoidance of doubt, Growmark shall have no other claim to or lien against any of the sale proceeds other than the amounts to be paid by the Buyers (or any purchaser who outbids the Buyers) directly to Growmark pursuant to paragraphs 2.a and b above.

4. No sale to the Buyers or to any higher or better bidder shall be approved unless it provides for a sale free and clear of all liens and security interests existing on the Collateral transferred to the Buyers *other than* the lien of Growmark.

5. The enforceability of this Stipulation and Consent Order against Growmark is contingent upon the following conditions precedent (the “**Conditions Precedent**”): (i) the occurrence and completion of a closing on the Frederick Road Properties and the Collateral as contemplated by the Sale Motion; (ii) the receipt by Growmark of the initial \$55,000 payment at closing; and (iii) execution and delivery by the Buyers (or any purchaser who outbids the Buyers at the sale hearing) to Growmark of documentation reasonably satisfactory to Growmark that grants Growmark a perfected first lien in and first-priority security interest upon all of the Collateral in the possession of the Buyers (or any purchaser who outbids the Buyers). In the event that the Conditions Precedent are not satisfied, Growmark shall retain all of its rights pursuant to and under the 2016 and 2017 NSA’s and with respect to its security interest in the Collateral and the rights and defenses of all parties to this Stipulation with respect to Growmark’s claim and asserted lien priority on the Collateral and any subordination agreements relating thereto are also retained and reserved.

6. The terms of this Stipulation may not be modified, revised, altered or changed to any extent, without the express written consent of Growmark, the Joint Debtors, and M&T Bank.

7. This Court shall retain jurisdiction over this matter to enforce the terms of this Stipulation.

3/16/2021

SO ORDERED:



sjk

HON. JEFFERY A. DELLER
U.S. BANKRUPTCY JUDGE

CONSENTED AND AGREED TO:

/s/ Ryan J. Cooney

Ryan J. Cooney (PA ID No. 319213)
ROBERT O LAMPL LAW OFFICE
223 Fourth Avenue, 4th Fl.
Pittsburgh, PA 15222
Phone: (412) 392-0330
Fax: (412) 392-0335
rcooney@lampllaw.com

Counsel for the Debtors

Dated: March 16, 2021

/s/ William E. Kelleher, Jr.

William E. Kelleher, Jr. (PA ID No. 30747)
Daniel P. Branagan (PA ID No. 324607)
DENTONS COHEN & GRIGSBY P.C.
625 Liberty Avenue
Pittsburgh, PA 15222-3152
Phone: (412) 297-4900
Fax: (412) 209-6072
bill.kelleher@dentons.com
daniel.branagan@dentons.com

Counsel for M&T Bank

Dated: March 16, 2021

/s/ Ryan James

Ryan James (PA ID No. 82799)
Michael A. Shiner (PA ID No. 78088)
Maribeth Thomas (PA ID No. 208376)
TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
Phone: (412) 566-1212
rjames@tuckerlaw.com
mshiner@tuckerlaw.com
mthomas@tuckerlaw.com

*Counsel for GROWMARK FS, LLC and
FS Financial Services, LLC*

Dated: March 16, 2021

/s/ Jill Locnikar

Jill Locnikar (PA ID No. 85892)
Assistant United States Attorney
Joseph F. Weis, Jr. United States Courthouse
Pittsburgh, PA 15219
Phone: (412) 894-7429
jill.locnikar@usdoj.gov

*Counsel for United States Department of
Agriculture, Farm Servicing Agency*

Dated: March 16, 2021

FILED
3/16/21 2:23 pm
CLERK
U.S. BANKRUPTCY
COURT - WDPA